

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MICHAEL S. GORBEY, #317611,

Petitioner,

v.

ACTION NO. 2:12cv667

HAROLD W. CLARKE,
Director, Virginia Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's guilty plea on December 13, 1999, in the Circuit Court for the County of Fauquier for possession of a firearm by a convicted felon and failure to appear. As a result of these convictions, Petitioner was sentenced to five years in prison, with all but one year and five months suspended. Moreover, two successive capias orders were issued for Petitioner for failure to contact his probation officer, on June 24, 2003 and again on July 22, 2010.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation filed November 13, 2013, recommends dismissal of the petition. ECF No. 29. Each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On November 27, 2013, the Court received Petitioner's objections

to the Report and Recommendation. ECF No. 30. Petitioner objects generally to the characterization of the *capias* as final orders, and argues that because both *capias* are still active, he is not outside the statute of limitations.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed November 13, 2013. It is, therefore, ORDERED that the petition be DENIED and DISMISSED. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner has failed to demonstrate “a substantial showing of the denial of a constitutional right,” therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Petitioner and counsel of record for Respondent.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 8, 2014